GARRIGUES

bulletin TAX

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The Entrepreneurs Law has made certain changes to the "patent box" regime, which is a regime that allows taxpayers to reduce their corporate income tax base where they license certain intangibles (excluding trademarks) that they have created. The aim of the regime is to encourage Spanish enterprises to invest in the creation of patents and other intangibles.

Notable among the changes to the regime is that the calculation of the reduction will no longer be based on revenues from licensing, but rather on the income obtained, that is, revenues net of the expenses incurred in working the patents or other intangibles. The effect is that now only 40% of the income thus obtained is included in the tax base (versus 50% of the revenues obtained, under the previous regime).

Once the new legislation takes effect, this regime will apply not only to the licensing of intangible assets but also to their transfer, provided that the transfer is between entities that do not form part of a corporate group within the meaning of article 42 of the Commercial Code, although in this case the incentive will be incompatible with the tax credit for the reinvestment of extraordinary income.

To qualify for the incentive, the enterprise need only have created the assets, sharing in 25% of their cost (previously the licensor had to have created the assets in their entirety). The scope of the incentive is also widened to include transactions in which the recipients reside in tax havens, provided that they are located in the EU and the arrangement result from valid economic reasons.

Another positive development is the elimination of the ceiling according to cost existing hitherto, whereby the reduction could only be made until the year in which the threshold of the cost multiplied by six was exceeded.

Lastly, it is also worth noting that taxpayers now have the possibility, before going ahead with a transaction, of asking the tax authorities to adopt an advance pricing agreement and of also requesting an advance agreement classifying the assets as belonging to one of the categories included in the incentive.

1. JUDGMENTS

1.1 VAT.- Proceeding against Spain relating to travel agents' scheme (CJEU. Judgment of September 26, 2013 in case C-189/11)

The CJEU's judgment in the proceeding against Spain in relation to the special VAT scheme for travel agents has just been published. In it, the court concluded that Spain had infringed the VAT Directive:

a) First of all, because it excluded from the special scheme sales to the public, by retail agents acting in their own name, of travel services organized by wholesale agents.

b) In addition, because it authorized travel agents, in certain circumstances, to charge in the invoice an overall amount of VAT that was not related to the tax actually charged to the customer; and because it authorized the customer, where he was a taxable person, to deduct that overall amount from the VAT payable.

c) Lastly, because it authorized travel agents, insofar as they benefited from the special scheme, to make an overall determination of the taxable amount for each tax period.

However, regarding the other issue raised in the proceeding, that is, regarding the application of the special scheme to travel services sold to persons other than travelers, the court concluded that there was no infringement.

1.2 Transfer and stamp tax.- In mortgages with a condition precedent, stamp tax is only levied on portion not subject to any condition (Madrid High Court. Judgment of July 30, 2013)

In the case examined in this judgment, a conditional mortgage (subject to a condition precedent) was arranged in such a manner that the mortgage liability would progressively increase as certain conditions were fulfilled.

When the taxpayer calculated the stamp tax payable on the mortgage, it considered that the tax base was only the minimum mortgage liability initially established (the portion not subject to any condition). However, the Madrid Autonomous Community Government considered that the tax base should be the entire mortgage liability, i.e., that existing at the outset and also subject to a condition (even if the condition had yet to be fulfilled), as did the Madrid Regional Economic-Administrative Tribunal (TEAR) subsequently.

The Madrid High Court agreed with the appellant's arguments, setting aside the Madrid TEAR's decision, and held that the tax base of the stamp tax payable when the mortgage was arranged should only be the amount of mortgage liability not subject to any condition, in accordance with the general transfer and stamp tax rules on acts subject to conditions precedent.

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1.3 Transfer and stamp tax.- Characterization of antichresis for stamp tax purposes (Supreme Court. Judgment of December 20, 2012)

In this judgment the Supreme Court analyzed the taxation of a mortgage loan. One of the clauses of the agreement assigned to the lender the rental income from a property owned by the borrower to cover default on any due dates.

There is a long-standing debate regarding whether in these cases, in addition to the stamp tax that arises on the execution of the deed recording the mortgage loan, stamp tax also becomes chargeable on a different taxable event, namely, the creation of an antichresis.

The Supreme Court held that for an antichresis to exist the following characteristics must be present:

- The mortgagee must have the power to manage the operation of the property. Among other obligations, and unless agreed otherwise, the mortgagee must bear any property levies, encumbrances on the property and maintenance and upkeep expenses.

- The agreement must include the right of the mortgagee to seek the sale of the property to satisfy the secured loan.

- The mortgagee and the mortgagor must agree that the rent assignment agreement will be binding on third acquirers of the property.

- The mortgagee must be given the right to receive all of the fruits of the property and not only the rental income.

Even where these features were present, the Supreme Court concluded that the antichresis would not attract stamp tax where it was created at the same time as the mortgage loan: in these cases, stamp tax only arose on the mortgage loan.

1.4 Administrative procedure/shifting of liability.- Where a company stops trading, secondary liability falls on the directors then in office when it stopped (National Appellate Court. Judgment of June 10, 2013)

The appellants, who were the directors of a company on the date on which its business was deemed to have definitively ceased, were considered secondarily liable for the company's debts. Against this, the appellants argued that the persons liable for the debts would, if applicable, be the directors appointed after the company ceased trading.

The National Appellate Court took the view, however, that in these cases liability should be shifted onto the persons who were directors at the time business ceased. The court also recalled that this was a case in which the law did not require the existence of a tax infringement or, therefore, bad faith or gross negligence on the part of the directors, but rather mere negligence, for which the following requirements must be met:

a) The legal entity must actually have ceased trading, with outstanding tax obligations.

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b) The person must have been a director at the time of cessation, with liability extending to the outstanding tax obligations of legal entities, except for penalties.

The court also held that the limitation period as regards the liable party's obligation should start to run as soon as an action could be brought against such party in accordance with the "*actio nata*" principle, that is, when the event triggering the liability occurred rather than the date on which the decision establishing the taxpayer's obligation was originally made.

The court concluded by asserting that there were therefore two different limitation periods: the one that referred to the statute-barring of actions against the principal debtor, which spanned the time period elapsing until the shifting of liability was notified, and the one that started to run with that notification (provided that the statute-barring of actions has not already occurred) which affected the actions to be brought against the liable party.

1.5 Administrative procedure.- Invoices are primary evidence but never the only evidence (Cataluña High Court. Judgment of January 24, 2013)

The taxpayer had transferred its principal residence, reporting the related capital gain. In a subsequent review procedure, the Tax Management Office requested, with a view to justifying the construction cost, the invoices documenting the acquisition of the building, without attaching any importance to the deed of new construction which showed the value attributed to the building, the municipal construction permit or the certificate from the architect who drafted the plan and the project manager.

The Cataluña TEAR upheld this conclusion. The Cataluña High Court, however, held that, when it came to justifying the cost of a building, invoices would only be primary evidence but never the only evidence, since the cost could be substantiated by any proof permitted by law, having regard to the circumstances of the case and the principles of burden of proof and ease of producing evidence. For this reason, the court considered that invoices were not essential.

1.6 Administrative procedure.- Maximum time limit established by article 150.5 of the General Taxation Law does not apply where rollback of procedure is due to formal defect (National Appellate Court. Judgment of May 16, 2013)

In its decision, the Central Economic-Administrative Tribunal (TEAC) ordered that a disposal of shares be reviewed, which required additional steps to be taken by the tax inspectors. These steps were delayed beyond the time limit established in article 150.5 of the General Taxation Law. This article specifically regulates the deadline for the steps to be taken in an inspection where, as a result of an economic-administrative or judicial decision, the inspection procedure must be rolled back.

Against the new case law interpretation adopted by the Supreme Court, the National Appellate Court noted in this judgment that in order for article 150.5 to apply there had to be an authentic rollback of the procedure, which required that (i) there be an express statement to this effect in an economic-administrative or judicial decision, and (ii) the

reason for the rollback of the procedure be a finding in the decision that there was a formal defect that impaired the claimant's chances of defense in accordance with article 239.3 of the General Taxation Law.

The conclusion in this case was that there was no such rollback, but rather mere acts enforcing the TEAC's decision, which were therefore not subject to the time limit established in the above-mentioned article.

1.7 Procedure for enforcing judgments.- Where tax is paid incorrectly, interest is calculated from time of payment until date of order for payment of interest (National Appellate Court. Judgment of May 9, 2013)

One of the assessments issued to the appellant established the payment of an amount to the appellant, which took place without late-payment interest. The appellant's claim for the interest was upheld by the TEAC. In carrying out the decision, the tax authorities paid interest calculated up to the date on which the appellant was refunded the principal sum.

In a motion against enforcement, the appellant contended that the interest should be calculated up to the date on which the refund of the interest was ordered as a result of the TEAC's decision, that is, 3 years after the tax was refunded to it.

The National Appellate Court agreed with the appellant's argument, taking the view that the obligation to pay late-payment interest on refunds of incorrectly paid tax was a tax obligation, given that the interest formed part of the debt, and that the interest should be calculated up to the date on which the tax authorities ordered payment of the interest.

2. DECISIONS AND RULINGS

2.1 Corporate income tax.- Possibility of applying index-linked adjustment to transfers of administrative public works concessions (Directorate-General of Taxes. Ruling V2042-13, of June 18, 2013)

Article 15.9 of the revised Corporate Income Tax Law ("TRLIS") provides for an index-linked adjustment mechanism that applies to gains obtained on transfers of fixed assets or of assets classified as noncurrent assets held for sale, provided that they have the nature of immovable assets.

In the case of enterprises that are public infrastructure concession-holders, the industry-specific adaptation of the National Chart of Accounts establishes that concession agreements can give rise to the recognition of a financial asset or of an intangible asset, depending on the remuneration arrangement. In both cases, regardless of their classification, they are considered fixed or noncurrent assets and are therefore assets eligible for the application of the index-linked adjustment, provided that they are considered immovable assets.

For these purposes, article 334 of the Civil Code includes public works administrative concessions among immovable assets and, accordingly, the Directorate-General of Taxes ("DGT") concluded that the index-linked adjustment could be applied when including gains on transfers of administrative concessions in the tax base.

2.2 Corporate income tax.- The approval of an arrangement with creditors does not mean that the formal insolvency situation has been overcome for the purposes of tax groups (Directorate-General of Taxes. Ruling V1995-13, of June 14, 2013)

Article 67.4.b) TRLIS provides that entities that are in a formal insolvency situation at the end of the tax period will not be able to form part of a tax group. Once the formal insolvency situation has been overcome, the company will be reinstated to the tax group, for which purpose it must adopt the relevant resolution to apply the consolidated tax regime.

In this respect, the DGT pointed out that the reason for this exclusion was the loss by the insolvent company of its powers of administration and disposition over its assets and, therefore, the loss of decision-making or control powers by the parent company of the group.

From this standpoint, the approval of an arrangement with creditors did not allow it to be considered that the formal insolvency situation had been overcome, because the company did not automatically regain full powers of administration and disposition over its assets through the arrangement. The formal insolvency situation had to be deemed to have been overcome in the year in which, after the order declaring compliance with the arrangement became final or, as the case may be, in the year in which, after any actions for a declaration of noncompliance that may have been brought had lapsed or been dismissed in a final judgment, the judge decided to bring the insolvency proceeding to an end.

2.3 Corporate income tax.- Expenses under cooperation agreements are deducted when it is signed (Directorate-General of Taxes. Ruling V1943-13, of June 11, 2013)

Article 25 of Law 49/2002, of December 23, 2002, on the tax regime for not-for-profit entities and tax incentives for patronage, provides for the deductibility of expenses under agreements for cooperation in general-interest activities, meaning agreements whereby the beneficiaries of the patronage regime agree, in exchange for financial assistance for the pursuit of their activities, to publicize, by any means, the participation of the cooperating entity in those activities.

It was asked whether the amount of the assistance committed to should be recognized as an accounting and tax expense in the year in which, after the agreements are signed, the agreed amounts were delivered or, on the contrary, whether it should be recognized as the cooperation was publicized. The DGT favored the first option, holding that the amounts paid under cooperation agreements would be considered an accounting and tax expense in the year in which they were paid.

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2.4 Corporate income tax.- Definition of 'industrial building' for depreciation purposes (Directorate-General of Taxes. Ruling V1879-13, of June 7, 2013)

The depreciation tables contained in the Corporate Income Tax Regulations distinguish (in the section on common assets) between industrial buildings and other types of buildings (administrative, commercial services, residential), with higher deprecation rates applying, in general, to industrial buildings.

It was asked what type of building an ophthalmological clinic was for these purposes. In view of the absence of any definition of 'industrial building', the DGT looked to article 7.2 of the General Taxation Law, according to which the provisions of the laws generally applicable in Spain will be secondary in nature.

Based on this enabling provision, the DGT looked at Industry Law 21/1992, of July 16, 1992, article 3 of which determines activities deemed to be industrial, including industrial activities relating to medicinal products and healthcare. Consequently, the DGT concluded that the building used as an ophthalmological clinic could be classified as an industrial building.

2.5 Corporate income tax.- Definition of full-time work for the purposes of applying super-reduced tax rates (Directorate-General of Taxes. Ruling V1868-13, of June 5, 2013)

For the 2009-2013 tax periods, additional provision twelve of the TRLIS provides for the possibility of the application of certain super-reduced tax rates (20%-25%) by entities whose net revenues are lower than €5 million and whose average workforce headcount is fewer than 25 workers. For these purposes, it provides that the average headcount will be calculated by reference to the persons employed, as established in labor and employment legislation, taking into account the working hours for which the worker was hired relative to full-time working hours.

In light of this provision, the DGT began by recalling that only workers passing the tests to be deemed employees (voluntariness, compensation, fact of working for another and dependence) could be taken into consideration and that the calculation of the average headcount should include both workers forming part of the permanent workforce and those hired under temporary contracts.

In this ruling, the DGT analyzed the following specific cases of full-time workers:

- Workers who have reduced working hours during part of the year pursuant to a collective layoff procedure. In this case, given that the social security legislation considers that workers whose contracts have been temporarily held in abeyance or whose working hours have been temporarily reduced on economic, technical, organization or production-related grounds are wholly or partly unemployed, the DGT concluded that the part of the year to which the reduction applies should be considered as the period of reduced working hours.

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- Workers who have requested a reduction in working hours to care for children. In the DGT's opinion, the treatment of contributions for the first two years of the period of reduced working hours due to childcare as if they were for full-time work operates solely for the purposes of benefits for retirement, permanent disability, death, survival, maternity or paternity.

  Consequently, if labor and employment legislation in force equates a contract with reduced working hours with a full-time contract in such cases, the requirement will be deemed to have been met. Otherwise, if one of the requirements established in additional provision twelve is not met, the above-mentioned provision would not apply.

2.6 Corporate income tax.- Definition of 'group' in relation to restrictions on application of reinvestment tax credit (Directorate-General of Taxes. Ruling V1844-13, of June 5, 2013)

In accordance with article 42 TRLIS, the reinvestment will not be deemed to have been made where, among other cases, the acquisition is from another entity belonging to the same group, within the meaning of article 16 TRLIS. For these purposes, article 16 establishes that there is a 'group' where an entity has or may have control over another or other entities according to the rules established in article 42 of the Commercial Code, regardless of its residence or the obligation to prepare consolidated financial statements.

The ruling analyzed the existence of a group in the case of two entities owned by the same individual. After analyzing the wording of article 42 of the Commercial Code, article 2 of the standards for the preparation of consolidated financial statements and Financial Statements Preparation Standard 13 of the National Chart of Accounts, and based on the report by the Spanish Accounting and Audit Institute (ICAC) in this connection, the DGT concluded that, given that the companies were not considered group companies within the meaning of article 42 of the Commercial Code, but rather within the meaning of Financial Statements Preparation Standard 13 of the National Chart of Accounts, the restriction established in article 42.5 TRLIS would not apply.

2.7 Personal income tax.- Possibility of avoiding the tax toll for transfers of securities in collective investment undertakings to Spain (Directorate-General of Taxes. Ruling V2377-13, of July 16, 2013)

Article 94 of the Personal Income Tax Law ("LIRPF") regulates a deferral regime for reinvestment among shares or units of collective investment undertakings regulated in Law 35/2003. Among other requirements, this regime is conditional on the acquisition, subscription, transfer and redemption of shares taking place through marketing entities registered with the National Securities Market Commission (CNMV).

However, the DGT relaxes this requirement for securities acquired and deposited through entities located outside Spain and which are transferred to Spain, provided that they meet the following requirements:

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- The shares or units transferred to Spain must have been acquired by the taxpayer before the undertaking began to be marketed in Spain by entities located in Spain and registered for such purpose with the CNMV.

- The marketing entity must have been furnished with all the necessary information to sufficiently evidence both the ownership and the particulars of the acquisition of the shares or units by the taxpayer.

  For these purposes, a certificate from the foreign financial institution will suffice. The certificate must state the identifying particulars and registration or supervision particulars of the certifying institution, the identifying particulars of the taxpayer, all particulars of the subscriptions or acquisitions of securities (identification of the institution, compartment, number of securities, date and amount of each acquisition) and, as the case may be, the list of subsequent transfers or partial redemptions (securities transferred and transaction date).

2.8 Personal income tax.- Interpretation and scope of the expression "annual income" for the tax credit for ascendants and descendants (Central Economic-Administrative Tribunal. Decision of June 27, 2013)

The LIRPF does not permit application of the allowances for ascendants and descendants where the persons giving the taxpayer the right to claim these allowances have an annual income (excluding exempt income) higher than €8,000. In this decision, the TEAC defined the concept of "annual income" for these purposes.

"Annual income" will be the amount that results from the arithmetic sum of the income, gains and losses for the tax period, without taking into account, for this calculation, the rules on the inclusion and offset of income and/or gains. The income is computed net, that is, after deducting the relevant expenses, but without applying the reductions for the obtainment of multi-year income, except in the case of salary income, in which case these reductions will be considered (since they are prior to the deduction of expenses), but not the reduction for the obtainment of salary income (provided for in article 20 LIRPF).

2.9 Nonresident income tax.- Withholding tax on the transfer of immovable property is not discriminatory (Directorate-General of Taxes. Ruling V1834-13, of June 4, 2013)

A Swiss national (an individual) with tax residence in Switzerland owned a property in Spain and wanted to contribute it to the formation of a company resident in Switzerland or Germany.

Article 25 of the revised Nonresident Income Tax Law establishes an obligation to withhold 3% tax on the consideration agreed to in transfers of immovable property located in Spain, except in cases of contributions of immovable property, or in the formation or increase in capital of companies resident in Spain. Therefore, the exemption does not apply where the property is contributed to a Swiss or German company.

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According to the DGT this provision is not discriminatory for the following reasons:

a) The non-discrimination provision of the Spain-Switzerland tax treaty establishes that the nationals of a Contracting State will not be subjected in the other Contracting State to any taxation or any connected requirement which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

   This provision seeks to avoid discrimination by reason of nationality, provided that the persons "are in the same circumstances." The expression "in the same circumstances" includes residence in particular.

   Consequently, the fact of imposing this obligation to bear a withholding (as well as its exceptions) on all non-Spanish residents, without imposing the same obligation on residents, does not entail any discrimination on the basis of the taxpayer's nationality, but rather a different treatment based on residence, which is permitted by the tax treaty.

b) In addition, the expression "in the same circumstances" means it is not possible to treat two persons resident in the same State (for example, Switzerland) differently merely because one has a different nationality.

   However, the obligation to bear this withholding tax applies to taxpayers who are not resident in Spain, and is singular and the same, in particular, for all nonresident income taxpayers resident in Switzerland, regardless of whether these taxpayers have Spanish, Swiss or any other nationality.

Consequently, the fact of imposing this obligation to bear withholding tax (as well as its exceptions) on all non-Spanish residents, and in particular on all Swiss residents, regardless of their nationality, does not entail any discrimination on the basis of the taxpayer's nationality.

2.10 VAT.- Chargeable event of ongoing transactions in the discount of promissory notes and credit lines (Directorate-General of Taxes. Ruling V1879-13, of June 7, 2013)

Article 75 of the VAT Law provides that in ongoing transactions (such as leases and supplies) the VAT will become chargeable when the portion of the price relating to each amount received becomes claimable, except in the case of payments in advance, in which case the VAT will become chargeable on collection of all or part of the price on the amounts actually received.

The DGT clarified that the amount of the consideration will not be deemed to have been collected when the promissory note is issued, but rather only when it is paid by the debtor, which will be deemed to have taken place on the maturity date of the promissory note.

In the DGT's opinion, the same holds true in cases where the amount of an invoice is obtained before the date on which it becomes claimable as a result of the existence of a credit line agreement signed with a financial institution.

2.11 Inspection procedure.- Noncompliance with deadline for procedure after rollback ordered in a decision means that the procedure conducted have not tolled the limitation period (Central Economic-Administrative Tribunal. Decision of June 13, 2013)

Article 150.5 of the General Taxation Law establishes that where a procedure is rolled back due to a judicial or economic-administrative decision, the procedure must end within the period remaining from the moment to which the procedure is rolled back, to the deadline for the inspection procedure or within six months, if earlier.

The TEAC affirmed that the breach of this six-month period meant that the limitation period was not deemed to have been tolled by the inspection procedure conducted until that date, and, therefore, the initial inspection period and that of its continuation as a result of the rollback formed part of a single inspection procedure.

2.12 Collection procedure.- The new rules on shifting of liability that allow liable party to apply 30% and 25% reductions to penalties apply retroactively where they are favorable (Central Economic-Administrative Tribunal. Two decisions of June 6, 2013)

The rules on liability in the General Taxation Law have been modified recently so that where penalties are shifted onto parties liable secondarily or jointly and severally, these parties can request the application of the 30% and 25% reductions for not contesting the regularization and for prompt payment and not contesting the penalty imposed, respectively. These reductions apply even where the principal debtor has not consented.

With the entry into force of this new rule, it was asked whether this applied to earlier decisions declaring liability which, because they have been contested, have not become final. The TEAC took the view that it did on the ground that, where a rule on penalties is involved, the most favorable rule should apply retroactively.

The TEAC clarified that if the principal debtor had already consented to the regularization (meaning a 30% reduction in the penalty), it would not be necessary to set aside the decision declaring liability. In this case, such decision declaring liability would remain in effect and an order would be made to roll back the procedure to the moment when payment was demanded so that the liable party could qualify for the 25% reduction for prompt payment and for not contesting the penalty imposed.

3. LEGISLATION

3.1 Law on support for entrepreneurs

Law 14/2013 of September 27, 2013, on Support for Entrepreneurs and their Internationalization (the "Entrepreneurs Law") was published in the Official State Gazette on September 28, 2013.

The Law seeks to boost entrepreneurial and business activity in Spain and, to that effect, introduces a number of key changes in the various areas (corporate/commercial, tax and labor and employment) involved in the creation and start-up of new ventures.

In relation to tax, the following new features, which have been described in greater detail in a specific Newsletter, are noteworthy:

a) Corporate income tax

- For tax periods starting on or after January 1, 2013, the R&D&I tax credit regime has been amended by removing the limit on the amount of gross tax payable against which it can be taken (subject to a 20% discount on its amount) and even allowing taxpayers to apply to the tax authorities for payment of the tax credit.

- The patent box regime has been modified for the licensing of intangibles after the entry into force of the Law.

- For tax periods starting on or after January 1, 2013, other incentives are envisaged for enterprises of a reduced size, such as an effective tax rate of 15% for income invested in new items of property, plant and equipment or investments in real estate to be used for economic activities, subject to certain conditions being met.

b) Personal income tax

- A new tax credit for investments in new or recently-formed companies has been created, as has an exemption for gains obtained on the subsequent divestment of those companies, provided they are reinvested in another entity of the same kind.

- In addition, the tax credit for investment of income in certain investments mentioned above in the context of corporate income tax has been included in personal income tax, with certain specific alterations.

c) Value added tax (VAT) and Canary Islands general indirect tax

A new special scheme has been introduced that will allow companies with revenues not exceeding €2 million to use the cash-basis accounting method, subject to fulfillment of certain requirements, meaning that they will be able to defer the chargeability of output VAT until they are paid by their customers and the deduction of input VAT. This scheme will affect not only persons that apply the scheme, but also the other parties that do business with them, as their deduction of input VAT will also have to be based on the cash-basis accounting method.

3.2 Excise and special taxes. Changes to the special tax on coal

Royal Decree-Law 9/2013, of July 12, 2013, which was published in the Official State Gazette on July 13, has made changes including those to the special tax on tax.

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First, it has brought in a reduced rate of €0.15/gigajoule for coal used for professional purposes other than cogeneration processes or direct/indirect electricity generation. The tax rate for coal used for other purposes remains unchanged.

In consequence, the concept of "coal used for professional purposes" is defined in the Law.

Also, certain aspects of the rules on charging the special tax have been changed. Specifically the Royal Decree-Law establishes that taxpayers that have charged the amount of tax due based on a provisional percentage notified by the owners of combined heat and power plants should adjust the amount of the tax charged according to the final percentage of the use of the coal.

Lastly, the infringement and penalty regime has been amended by establishing a new infringement consisting in the incorrect disclosure of data to taxpayers in relation to coal supplies made applying the tax rate of €0.15/gigajoule. The Royal Decree-Law refers other infringements to the provisions of the General Taxation Law.

3.3 Transitional tax lease system

Royal Decree-Law 11/2013, of August 2, 2013, for the protection of part-time workers and other urgent economic and social measures, was published in the Official State Gazette on August 3, 2013.

Among other measures, and further to the European Commission's decision of July 17, 2013, the Royal Decree-Law sets out the transitional regime that must be applied in relation to all administrative authorizations currently in force that have been affected by the terms of that decision, relating to the tax regime applicable to certain finance lease agreements, which considers that the Spanish tax lease system constitutes illegal state aid.

The aim of the Royal Decree-Law is to comply with the decision, in terms of adapting the legislation, in respect of administrative authorizations granted between April 30, 2007 and June 29, 2011, which will be treated as follows:

- The provisions of article 115.11 TRLIS (as worded at December 31, 2012) will not apply since according to the Commission decision it constitutes state aid.

- The special tonnage-based tax system for shipping companies will not apply to EIGs, since according to the decision it constitutes incompatible state aid.

3.4 Amendment of Corporate Income Tax Regulations to promote the alternative fixed-income market

Royal Decree 633/2013, of August 2, 2013, amending the Corporate Income Tax Regulations, approved by Royal Decree 1777/2004, of July 30, 2004, and Royal Decree 764/2010, of June 11, 2010, implementing Private Insurance and Reinsurance

Intermediation Law 26/2006, of July 17, 2006, in terms of statistical, accounting and business information and professional competence, was published in the Official State Gazette on August 31, 2013.

Specifically, financial assets traded on the alternative fixed-income market will have the same treatment in terms of withholding taxes as financial assets traded on the regulated markets. Also, an exemption from withholding tax has been introduced for gains obtained by corporate income taxpayers as a consequence of the acquisition of financial assets on the alternative fixed-income market.

4. MISCELLANEOUS

4.1 Impairment of assets. ICAC Decision

The decision of September 18, 2013 by the Spanish Accounting and Audit Institute ("ICAC"), making recognition and measurement standards and information to be included in the notes to financial statements on the impairment of assets, was published in the Official State Gazette on September 25, 2013.

In its decision, the ICAC systemizes the administrative rulings on the impairment of assets and implements the recognition and measurement standards of the National Chart of Accounts, the National Chart of Accounts for Small and Medium-sized Enterprises, and the standards for preparation of consolidated financial statements regulating value adjustments due to impairment.

These implementing provisions must be applied by all enterprises, whatever their legal form, when preparing their individual and, where appropriate, consolidated financial statements. However they are only secondarily applicable to financial institutions which, pursuant to their own legal regime, are governed by industry-specific accounting standards. In addition, they will only apply to test the impairment of cash-flow generating assets of enterprises falling within the scope of application of the rules on accounting aspects of public enterprises approved by Order EHA/733/2010 of March 25, 2010 and of not-for-profit entities, which should be governed by the adaptation rules approved by Royal Decree 1491/2011 of October 24, 2011.

The decision warns that although using estimates does not undermine the reliability of financial statements, as it forms part of accounting practice, enterprises should be prudent when making estimates and measurements in conditions of uncertainty, in order to preserve the reliability of financial reporting.

4.2 Financial goodwill arising from acquisitions of holdings. New state aid procedure

The decision to initiate a state aid procedure in relation to the amended tax scheme for acquisition of holdings in foreign enterprises was published in the OJEU on September 7, 2013.

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Specifically, the new procedure focuses on the amortization of financial goodwill as regulated in article 12.5 TRLIS. This rule allows enterprises that acquire interests in the equity of nonresident entities (meeting certain requirements) to deduct for tax purposes the financial goodwill arising from the acquisition over a minimum of 20 years (although the reduction has been lowered from 5% to 1% in FY2011 to FY2013).

In 2009 and in 2011 the Commission adopted negative decisions, including the recovery of aid granted to beneficiaries in respect of acquisitions of subsidiaries resident in and outside the EU. In both cases, the scope in time of the recovery obligation was limited due to the existence of legitimate expectations.

The latest decision to initiate a formal investigation procedure calls into question the possibility of article 12.5 being applied to indirect acquisitions of subsidiaries (both within and outside the EU), since the new administrative interpretation introduced by Spain modifies the scope of a measure that has already been analyzed and declared to be "aid".

In the Commission's view, the possibility of applying article 12.5 to the acquisition of holding entities where the goodwill is to be found on a second or subsequent tier signified enlarging the scope of a tax measure that had been declared illegal and incompatible aid, so it would constitute new aid.

4.3 Reduction of 99% in inheritance and gift tax in the Valencia Autonomous Community. Request for ruling on unconstitutionality

In a decision rendered on May 8, 2013, the Supreme Court submitted a request for ruling on unconstitutionality to the Constitutional Court relating to the 99% reduction in inheritance and gift tax established in the Valencia Autonomous Community.

In effect, the inheritance and gift tax rules in the Valencia Autonomous Community include, among other reductions, a 99% reduction in the tax payable in the case of transmissions mortis causa to relatives of the decedent, provided they have their principal residence in the Valencia Autonomous Community on the date when the tax is chargeable.

The request submitted by the Supreme Court focuses on the condition established in the Valencia Autonomous Community legislation relating to the taxpayer's principal residence, and considers that it may infringe articles 14, 31.1 and 139.1 of the Spanish Constitution, which establish the principles of equality, fairness in taxation and ability to pay, since the different treatment is based solely on the question of residence in the autonomous community.

The Supreme Court argues that there is a situation of complete inequality and that the question of residence (from which the inequality derives) does not reflect any constitutionally lawful goal.

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4.4 Other tax measures. Bill before Parliament

As indicated in July's Tax Newsletter, on July 3, 2013 a Bill was published on the website of the Lower House of the Spanish Parliament establishing certain environmental tax measures and adopting other tax and financial measures. On September 20, 2013, the text of the Bill approved by the Lower House, following a number of amendments introduced in that initial phase, was sent to the Upper House.

There follows a brief description of the most notable new tax measures introduced through the amendments made by the Lower House in respect of the original Bill laid before Parliament on July 3, 2013:

a) Corporate income tax

- The original Bill established that losses from the transfer of a holding in a resident or nonresident entity would be reduced by the amount of any dividends or shares in income received from the investee throughout the period of ownership of the holding.

  This has been corrected by restricting the calculation of the reduction in losses on the sale to dividends received from 2009 onwards, and provided that such dividends have not already been taxed at the shareholder.

- The limitation on the offset of tax loss carryforwards from previous fiscal years will not apply in relation to the amount of income corresponding to debt compositions as the result of an agreement with unrelated creditors.

b) Tax on fluorinated greenhouse gases

A series of amendments have been made to the regulations on this tax, including a reduction for 2014 and 2015 and certain tax credits and exemptions.

c) Other tax measures

Amendments have also been proposed to Law 15/2012, of December 27, 2012, on Tax Measures for Energy Sustainability. The amendments made affect, among others, the tax on production of spent nuclear fuel and radioactive waste resulting from nuclear power generation.

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